

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
v.)
)
THE STATE OF IOWA; THOMAS J.)
VILSACK, Governor of the)
State of Iowa)
)
)
Defendants.)
_____)

CIVIL NO. _____

SETTLEMENT AGREEMENT

The United States and the State of Iowa agree to settle this matter on the terms and conditions set forth below in this Settlement Agreement.

A. This case was instituted by the United States pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997.

B. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345.

C. Venue is appropriate pursuant to 28 U.S.C. § 1391(b).

D. The United States is authorized to institute this civil action by 42 U.S.C. § 1997a and has met all prerequisites for the institution of this civil action prescribed by the statute, provided, however, that if this agreement is never finalized, the State reserves the right to challenge the United States' authorization to institute this action.

E. The Defendants are the State of Iowa and the Honorable Thomas J. Vilsack, Governor of the State of Iowa, in his official capacity as Governor. Collectively, the Defendants shall hereinafter in the Settlement Agreement and Plan be referred to

as "the State." The collective residents of both the Woodward and Glenwood Resource Centers ("Resource Centers") will hereinafter in the Settlement Agreement be referred to as "residents."

F. Woodward and Glenwood are institutions covered by CRIPA and operated by the State to provide habilitation and other protections, supports and services to persons with mental retardation and other developmental disabilities. The State has authority and responsibility for the operation of Woodward and Glenwood and is responsible for the implementation of this Settlement Agreement.

G. On March 22, 1999, the Attorney General of the United States, by and through the Assistant Attorney General, Civil Rights Division, notified the Governor of the State of Iowa, the Attorney General of the State of Iowa, the Director of the Iowa Department of Human Services, and the Superintendents of Woodward and Glenwood, of her intention to investigate allegations of unconstitutional and unlawful conditions at Woodward and Glenwood pursuant to CRIPA.

H. Following an investigation, on July 9, 2002, the Attorney General of the United States, by and through the Assistant Attorney General, Civil Rights Division, informed the Governor of the State of Iowa, the Attorney General of the State of Iowa, the Director of the Iowa Department of Human Services, and the Superintendents of Woodward and Glenwood that the Attorney General had reasonable cause to believe that persons residing in or confined to Woodward and Glenwood were being subjected to conditions that deprived them of their legal rights and of their rights, privileges, and immunities secured by the Constitution of the United States.

I. After notification of the initial investigation in 1999, and continuing from time to time thereafter, the State voluntarily undertook initiatives to address outstanding concerns with regard to the protections, services, and supports provided at Woodward and Glenwood.

J. The State has at all times denied that conditions at Woodward and Glenwood violate the constitutional or federal statutory rights of residents at Woodward and Glenwood. The State further maintains that it currently is adhering to many of the policies and practices set forth in the Plan, discussed in paragraph Q, that is incorporated herein by reference, and the

State maintains that the fact that a particular policy or practice is included in the Plan is not to be construed as evidence by any person or party that the State is not following that policy or practice.

K. The State maintains that as a matter of State policy, the State has at all times aspired to provide a level of care to Woodward and Glenwood residents in excess of what it regards as a minimal level of care required by the Constitution and federal law.

L. The parties entering into this Settlement Agreement recognize the constitutional and legal interests of the residents of Glenwood and Woodward, and for the purpose of avoiding protracted and adversarial litigation, agree to the provisions set forth herein.

M. In entering into this Settlement Agreement, State officials do not admit any violation of the Constitution or of any law, and this Settlement Agreement and Plan may not be used as evidence of liability in any other civil or criminal proceeding.

N. The provisions of this Settlement Agreement are a lawful, fair, and appropriate resolution of this case.

O. This Settlement Agreement, voluntarily entered into, shall be entered by the United States District Court for the Southern District of Iowa.

P. This Settlement Agreement shall be applicable to and binding upon all of the parties, their officers, agents, employees, assigns, and successors.

Q. The parties jointly have agreed upon a plan (hereinafter called the "Plan"), filed simultaneously herewith, to address outstanding concerns that impact or have impacted residents. The provisions of the Plan are incorporated in their entirety into this Settlement Agreement as if fully set forth, word-for-word, herein.

R. In order to monitor the State's implementation of the Settlement Agreement, the United States and its consultative experts shall regularly conduct compliance reviews to ensure that the State has implemented and continues to implement all measures required by this Settlement Agreement. The United States shall make its consultative experts and agents available for technical assistance following such reviews. In order to assist in the implementation of the Plan, the United States recognizes that the

Plan will require the retention of, and review by, consultative experts by the State.

S. The United States and its agents shall have the right to request, inspect, and review facility records, resident charts and other documents, conduct interviews with residents outside the presence of staff consistent with this Settlement Agreement (unless the resident requests otherwise), and observe activities normally associated with providing protections, services, and supports to residents that are necessary to assess the State's compliance and/or implementation efforts with this Settlement Agreement and Plan. The United States will submit requests for documents in writing at or near the time of the request. The United States and its agents may obtain copies of all documents, records, and materials relevant to compliance and/or implementation of the Settlement Agreement and Plan. The State shall provide any requested documents, records and materials to the United States as soon as possible, but no later than within 20 business days of the request. At the discretion of the employee, any staff member may request that an attorney be present during an interview with a United States representative and/or agent. The United States may receive unsolicited calls or contacts from State personnel outside the presence of State representatives. The United States shall endeavor to interview employees onsite at the facility only after it provides reasonable notice to the State. However, nothing in this Settlement Agreement and Plan shall abridge the whistleblower rights of State employees or contractors under law or limit the ability of the United States to participate in related interactions with State employees or contractors. The United States agrees to provide the State with reasonable notice of any visit or inspection, although the parties agree that no notice shall be required in an emergency situation where the life, immediate health, or immediate safety of resident(s) is at issue. Such access shall continue until this action is dismissed.

T. Within 90 days from the Court's entry of this Settlement Agreement as an order, the State shall provide DOJ with an initial status report regarding its compliance with this Settlement Agreement. Within 180 days from entry of this order, the State shall provide DOJ with a second status report regarding its compliance with this Settlement Agreement. Within one year of the Court's entry of this Settlement Agreement, and within every 180 days thereafter (so long as this agreement remains in effect), the State shall provide DOJ with a status report regarding its compliance with this Settlement Agreement. Each status report shall provide:

- (1) a description of the State's status in complying with each and every provision of this Settlement Agreement and the steps taken to achieve compliance with each and every provision of this Settlement Agreement during the period since the last status report; and
- (2) all relevant documents that demonstrate the State's compliance with this Settlement Agreement, including, but not limited to, policies, procedures, protocols, training materials, and curriculum vitae.

U. (1) Except where there is an emergency situation where the life, immediate health, or immediate safety of resident(s) is at issue, if the United States maintains that the State has failed to carry out the requirements of this Settlement Agreement, the United States shall notify the State with specificity of any instance in which it maintains that the State has failed to carry out the requirements of this Settlement Agreement. With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of resident(s), the State shall have 30 days from the date of a deficiency notice from the United States to cure the claim of non-compliance before the United States may file any compliance motion with the Court. During this period, the parties shall coordinate and shall discuss areas of disagreement and attempt to resolve outstanding differences. If the parties reach an agreement that varies from the Plan, the new agreement shall be reduced to writing, signed, and filed with the Court for approval.

(2) If the parties fail to reach an agreement, the United States may seek specific performance of the Settlement Agreement and Plan in the first instance; however, if a Court Order for specific performance is issued, nothing shall limit the ability of the United States to seek other enforcement remedies in subsequent court submissions with regard to the Court's Order for specific performance.

(3) The United States agrees that in this case it will not seek a finding of, or sanction for, contempt against either the State of Iowa or any State officials unless an order for specific performance has been entered and is thereafter violated in such a manner as to make such a finding or sanctions appropriate.

V. The purpose of the Settlement Agreement and the incorporated Plan is that the State will be able to achieve desired outcomes for and provide the necessary protections, supports, and services to the residents of Woodward and Glenwood. The parties agree that the Settlement Agreement will be terminated and the case

dismissed four years and six months after the effective date of the Agreement. The Agreement may terminate at an earlier date if the parties agree that the State of Iowa is in substantial compliance with each provision of this Agreement, including the incorporated Plan, and the State has maintained compliance for at least 18 months. The burden shall be on the State of Iowa to demonstrate compliance. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of sustained compliance shall not constitute substantial compliance.

W. Unless specified to the contrary elsewhere herein, in any compliance or other adversarial hearing prior to final dismissal of this action, the burden of proof will be on the party moving the Court.

X. All provisions of the Settlement Agreement and the incorporated Plan shall have ongoing effect until the final dismissal of this action. The Court shall retain jurisdiction of this action for all purposes under this Settlement Agreement until such time as the Settlement Agreement is terminated. Independent of the foregoing, if the United States and the State agree that either facility has achieved substantial compliance with each section of the Settlement Agreement and incorporated Plan, the parties shall file a joint motion to terminate this Settlement Agreement and Plan with respect to the facility that has achieved substantial compliance.

Y. The parties reserve the right to withdraw consent to this Settlement Agreement in the event that this Settlement Agreement is not approved by the Court in its entirety.

Z. There shall be no *ex parte* communications by either party with the Court. There shall be no *ex parte* communications by either party with the employees, experts, agents, or assigns of the other party that is inconsistent with this Settlement Agreement and Plan.

AA. The parties agree that any records produced pursuant to this Settlement Agreement and/or Plan may be shared only with the following: (1) the Court, including public submissions and filings; (2) any expert(s) or consultant(s) selected or retained by the parties pursuant to this Settlement Agreement and Plan; (3) all counsel of record in this matter; (4) staff and clerical

personnel involved in the preparation and review of the submissions and reports for counsel of record; and (5) United States and other governmental officials, as necessary, in order to carry out law enforcement responsibilities. All parties shall be responsible for maintaining the confidentiality of records in their possession. Submissions to the Court that contain identifying information of residents (such as their full name, address, or social security number) shall be filed with the Court using pseudonyms or the residents' initials.

BB. All parties shall bear their own costs, including attorney fees.

CC. It is intended that the parties will pursue a problem-solving approach so that litigation and disagreements can be minimized and the energies of the parties can be focused on the task of meeting the needs of the residents and achieving the outcomes set forth in this Settlement Agreement. Absent an emergency condition, the United States agrees to attempt to confer with the State in a good faith effort to attempt to reach agreement regarding remedy of the alleged deficiencies. If the parties are not able to reach agreement, the United States may seek enforcement of this Settlement Agreement and Plan from the Court consistent with this Settlement Agreement.

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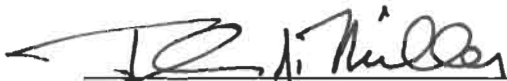
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Respectfully submitted,

FOR THE STATE OF IOWA:



THOMAS J. VILSACK
Governor

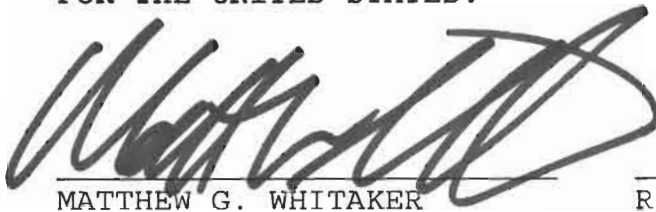


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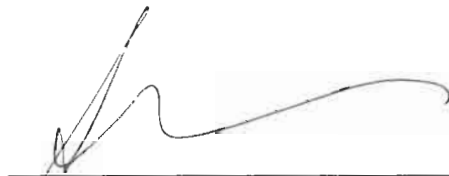
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WHEREFORE, the parties to this action having agreed to the provisions in the Settlement Agreement and Plan set forth above, and the Court being advised in the premises, this Settlement Agreement and Plan are hereby entered as the order and judgment of this Court. It is so ordered,